

REMARKS

Claims 1-59 are pending. Claims 1-4, 9-10, 12-15, 20-25, 37-38, 42 and 44 have been amended to more clearly recite the antecedent "the population of activated CD4+ T cells". Claims 12, 23, and 42 have been amended to be dependent of claim 1. Claims 13-14, 24-25, and 44 have been amended to reflect the amendment of claims 12, 23, and 42, respectively.

Claims 12-14 and 20-22 have been amended to replace the term "first agent" with "an agent which provides a primary activation signal to the CD4+ T cells", and to replace the term "a second agent" with the recitation "an agent which stimulates a B7-2-induced signal". Support for the newly amended claims can be found at least at page 6, lines 18-28, and the paragraph bridging pages 6 and 7 of the specification. No new subject matter has been added, and the amended claims should not necessitate an additional search.

Response to Restriction Requirement Under 35 U.S.C. §121

Responsive to the outstanding Office Action, Applicants hereby elect the following, *with traverse*: Group I (claims 1-11); the species of stimulating a Th2 response; the subspecies of a non-soluble form of B7-2; and the subspecies of a stimulatory form of B7-2 attached to a solid support, as set forth in the restriction requirement mailed from the Patent Office on November 27, 1996. Applicants traverse this restriction requirement on the grounds that Groups I, II, III, and IV should properly be regrouped into a single group.

In the Office Action, the Examiner required election of one of the following groups:

Group I: claims 1-11, drawn to a method of modulating a Th2 response;

Group II: claims 12-22, drawn to a 2 step method of activation involving 2 agents;

Group III: claims 23-41 drawn to a method of treating a condition;

Group IV: claims 42-53, drawn to *ex vivo* modulation of a Th2 response using 2 agents and *in vivo* administration of the activated cells;

Group V: claims 54, 55, and 58, drawn to a package form of a stimulatory agent; and

Group VI: claims 56, 57, and 59, drawn to a package form of an inhibitory agent.

Applicants believe the restriction requirement under 35 U.S.C. §121 to be improper on the grounds that Applicants have presented an allowable generic linking claim (claim 1) drawn to a method for selectively modulating a Th2-type response within a population of activated CD4+ T cells, comprising contacting the population of activated CD4+ T cells with an agent which modulates a B7-2-induced signal in the CD4+ T cells. Applicants respectfully submit that this allowable generic linking claim (claim 1) encompasses a variety of species, including, for example, the species of stimulating (claims 2-8, 13-19, 24-30, and 43-50) or inhibiting Th2 responses (claims 9-11, 37-41, 51-53) as well as the subspecies of a soluble (claims 6-8, 17-19, 28-30, 48-50) or non-soluble form of B7-2 (claims 4-5, 16-17, 26-27, 46-47).

In addition, claims 12-22, 23-41 and 42-53 have been as rewritten in dependent form to modify independent claim 1. For example, claim 12 as amended specifies that the population of activated CD4+ T cells of claim 1 is activated by contacting the CD4+ T cells with an agent which provides a primary activation signal to the T cells. Claim

23 as amended is drawn to a method of claim 1 in which the population of CD4+ T cells are contacted in a subject with an agent which modulates a B7-2-induced signal in the CD4+ T cells. Claim 42 as amended is drawn to a method of claim 1 in which the population of CD4+ T cells are contacted with an agent which modulates a B7-2-induced signal in the CD4+ T cells *ex vivo* and then administered to a subject.

In view of the above, the presence of claim 1, which is generic to claims 2-53 as amended, renders a restriction under 35 U.S.C. § 121 is improper.

The Examiner further required an election of patentably distinct species with the above-recited groups. If any of Groups I-IV were elected, the Examiner required a species election of a "specific method of modulation encompassing a specific agent", or "specific pair of agents", or a "specific method for treating a specific condition encompassing administration of a specific agent", or a "specific method of *ex vivo* modulation encompassing a specific pair of reagents".

Accordingly, although Applicants believe that a restriction under 35 U.S.C. §121 is improper given generic claim 1, a species election may be proper for searching purposes only, posing no undue burden on the Examiner. Thus, Applicants hereby elect the following: (1) the species of stimulation of a Th2-type response; (2) the subspecies of a non-soluble form of B7-2; (3) the subspecies of a stimulatory form of B7-2 attached to a solid phase support; (4) the subspecies of anti-CD3 antibody to activate a population of CD4+ T cell; (5) the subspecies of a an autoimmune disease as a condition in a subject to be ameliorated and (6) the subspecies of multiple sclerosis as the autoimmune disease.

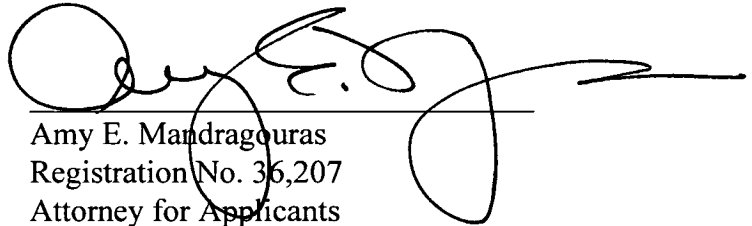
It is the Applicants' understanding that under 35 U.S.C. §121, an election of a single species for prosecution on the merits is required, to which the claims will be restricted if no generic claim is finally held allowable. Applicants submit that claim 1 is generic. Applicants further understand that upon the allowance of a generic claim, they

will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141 et seq.

SUMMARY

If a telephone conversation with Applicants' Attorney would expedite the prosecution of the above-identified application, the examiner is urged to call Applicants' Attorney at (617) 227-7400.

Respectfully submitted,



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